

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 2526

INTRODUCER: Banking and Insurance Committee and Senator Posey

SUBJECT: Licensing of Insurance Agents

DATE: April 24, 2006

REVISED: 04/25/06

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
| 1. | <u>Emrich</u> | <u>Deffenbaugh</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/2 amendments</u> |
| 3. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 4. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 5. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |
| 6. | <u> </u> | <u> </u> | <u> </u> | <u> </u> |

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Committee Substitute for Senate Bill 2526 makes various changes to insurance agent licensing provisions under the Insurance Code. Specifically, the bill does the following:

- Allows insurance agent applicants to voluntarily disclose their race, ethnicity, gender, and native language on license applications to the Department of Financial Services (DFS) which will use the information for research and statistical purposes to improve the fairness of the license examinations;
- Allows fingerprints of insurance agent applicants to be taken at a designated examination center and requires DFS to have fingerprinting equipment available;
- Revises circumstances under which the department must notify an applicant about license examinations;
- Exempts from the examination requirement for a claims adjuster an individual who has obtained certification as a claims adjuster from the Association of Property and Casualty Claims Professionals;
- Provides procedures for applying for an agent licensure examination prior to submitting a license application;

- Requires DFS to annually publish a report summarizing information relating to life insurance agent examinations administered each year, including ethnic classifications (race or ethnicity, gender, native language) as to passing rates and other specified criteria;
- Deletes a prohibition against the department denying, delaying, or withholding approval of license applications without a criminal history report;
- Requires DFS to provide certain information to examination applicants; and
- Appropriates to DFS for FY 2006-07, \$158,995 (recurring) and \$120,069 (non-recurring), from the Insurance Regulatory Trust Fund, and 3 full-time positions with \$103,285 in associated salary rate.

This bill substantially amends the following sections of the Florida Statutes: 626.171, 626.211, 626.221, 626.231, 626.241, 626.251, 626.261, 626.281 and 626.291.

This bill creates the following section of Florida Statutes: 626.2415.

II. Present Situation:

Licensure of Insurance Agents in Florida

In general, insurance agents transact insurance on behalf of an insurer and must be licensed by the Department of Financial Services (DFS or department) and be appointed (i.e., given the authority by an insurer to transact business on its behalf) by at least one insurer. Requirements for insurance agents vary by license, line of authority, and are based upon resident or nonresident license type. General requirements for agent licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.

There are various types of insurance agents¹ including the following:

- “Customer representatives” are persons appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.
- “Adjusters” include public adjusters, independent adjusters, or company employee adjusters. Generally, a “public” adjuster is any person, other than a licensed attorney, who prepares, completes, or files an insurance claim for an insured or who negotiates or settles an insurance claim on behalf of an insured. An “independent” adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract. A “company” adjuster is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage, or settles an insurance claim under an insurance contract.
- “Service representatives” are persons employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and affecting an insurance contract.

¹ The term “agent” means a general lines agent, life agent, health agent, or title agent, or other enumerated agent within the context of the Insurance Code.

- “Managing general agents” are persons managing all or part of the insurance business of an insurer. A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.
- “Reinsurance intermediaries” include reinsurance intermediary brokers and reinsurance intermediary managers. A reinsurance intermediary broker is any person who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the power to bind reinsurance on behalf of the ceding insurer. A reinsurance intermediary manager is any person who has authority to bind the assumed reinsurance business of a reinsurer or manages the reinsurance business of a reinsurer and acts as an agent of the reinsurer.

Presently, the DFS must approve an applicant’s license application prior to the applicant taking the licensure examination under s. 626.211, F.S.

Fingerprinting Requirement

Presently, a person’s application for licensure as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary must be accompanied by a set of the applicant’s fingerprints.² The applicant’s fingerprints are required to be taken by a law enforcement agency or other entity approved by the DFS and subsequently submitted to the Florida Department of Law Enforcement (FDLE) to ascertain whether the applicant has a state or federal criminal record.³

In addition to a law enforcement agency location, an applicant for licensure (as one of the above described insurance representatives) can get fingerprinted at 64 county public school administrative offices. However, in Duval, Dade, Broward, and Palm Beach counties, fingerprinting is provided by the DFS at county government locations, rather than at the school administrative offices. The DFS provides fingerprinting services at the school administrative offices under a memorandum of understanding (MOU) between the department and the Department of Education (DOE). The DOE contracts with a private vendor to provide fingerprinting services at the county school offices and the MOU allows the DFS to provide fingerprinting for its license applicants under that contract. The school district offices offer fingerprinting during normal business hours. The department contracts with a different vendor to provide fingerprinting services at the locations in Duval, Dade, Broward, and Palm Beach counties.

According to the DFS, a fingerprinting fee of \$64 is paid by an applicant for licensure and such fee is established by administrative rule.⁴

The department currently has 19 examination centers in Florida and contracts with a private vendor to administer the license examinations. Examination times are not set by statute or

² Section 627.171(4), F.S. If the applicant is not an individual (i.e. a sole proprietorship, partnership, or corporation), fingerprints must be provided by the sole proprietor, majority owner, partners, officers, and directors, whichever is applicable. If an insurance representative entity licensed by the DFS changes ownership or if new partners, officers, or directors of the entity are employed or appointed, the new owners, partners, officers, or directors must submit fingerprints to the DFS within 30 days after the change.

³ Section 624.34, F.S., sets forth what procedures the FDLE uses to accept and process the applicant’s fingerprints.

⁴ Section 624.501, F.S., allows the DFS to charge a fee for fingerprinting.

administrative rule; rather they are set based upon the demand according to the number of applications received. Also, fingerprinting services are not available at the 19 centers.

Proponents of the bill state that permitting fingerprinting at testing locations will be much more convenient for applicants rather than under the current procedure of requiring fingerprints to be taken at law enforcement agencies or other designated facilities.

Examination Requirements/Exemptions

Section 626.221, F.S., sets forth the examination requirements and exemptions for insurance agent, adjuster, and customer representative licenses. There are numerous exemption provisions from the examination requirement in the law and if an applicant for licensure (as an agent, adjuster, or customer representative) meets one of the exemptions, he or she is not required to take the examination associated with the license. One of the exemptions from the adjuster examination is for applicants who have the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in Florida or the designation of Professional Claims Adjuster (PCA) from the Professional Career Institute. Exemptions are provided for these designated adjusters because DFS approves the curriculum of the educational institutions and ensures the curriculum covers a comprehensive analysis of insurance which includes testing at least equal to testing given by the DFS for the all-lines adjuster license.

Collection of Demographic Information from Applicants

According to representatives with the DFS, the agency does collect certain demographic information pertaining to an applicant's background. However, an applicant does not have to provide information on the examination application as to race, ethnicity or ethnic language. Proponents of this bill point out that the minority community is underserved as far as accessing certain insurance, particularly life insurance. Life insurance is the most usual protection for families against financial hardship resulting in the death of a family member and the majority of African Americans and Hispanics do not use any type of life insurance product, according to these proponents. Therefore, it is important to review the fairness of the department's license examination in terms of these concerns.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.171, F.S., pertaining to requirements for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary. The bill provides that effective January 1, 2007, an applicant for an above referenced license may voluntarily provide information on his or her application as to gender, native language, race or ethnicity. Such application must state that an applicant is not required to disclose information as to race, gender, or native language and will not be penalized for not doing so, and that the DFS will use the data exclusively for research and statistical purposes to improve the fairness of the examination. Applicants are required to provide their level of education.

The bill mandates that the DFS provide fingerprint processing services at each of its designated examination centers to take applicant's fingerprints. Applicants must pay the fingerprint fee. The department is prohibited from approving a licensure application if fingerprints have not been submitted.

Section 2. Amends s. 626.211, F.S., pertaining to license applications. The bill provides that this provision will be effective January 1, 2007. The legislation removes a prohibition against the department denying, delaying, or withholding approval of applications due to the fact that it had not received a criminal history report based on the applicant's fingerprints. The bill also revises circumstances under which the department must notify an applicant about license examinations.

Section 3. Amends s. 626.221, F.S., to exempt from the examination requirement for a claims adjuster an individual who has obtained certification as a claims adjuster from the Association of Property and Casualty Claims Professionals.

Section 4. Amends s. 626.231, F.S., relating to eligibility for an examination. The bill provides that effective January 1, 2007, an applicant is allowed to take the required license examination prior to submittal or approval of his or her application by submitting an examination application through the DFS internet website. The bill specifies information the applicant must provide DFS including voluntarily reporting race or ethnicity, gender or native language information. Such application must state that an applicant is not required to disclose information as to race, gender, or native language and will not be penalized for not doing so, and that the DFS will use the data exclusively for research and statistical purposes to improve the fairness of the examination. Each application must be accompanied by an examination fee.

Section 5. Amends s. 626.241, F.S., pertaining to the scope of the examination, to provide that this section applies to any person who submits a license application and to any person who submits an examination application prior to filing an application for a license.

Section 6. Creates s. 626.2415 F.S., pertaining to annual reports of results of life insurance examinations. The legislation requires the department to annually prepare and publish a report (by May 1st) that summarizes statistical information relating to life insurance agent examinations administered during the preceding calendar year. The annual report must include information for all examinees, combined and separately, by race or ethnicity, gender, education level and native language according to specified criteria which includes the percentage and number of examinees who passed the examination; the mean scaled scores and standard deviation of scaled scores on the examination. The department must make available upon request a statistical summary relating to each operational item on each life insurance test form. The department is authorized to provide application information under contract with a testing service.

Section 7. Amends s. 626.251, F.S., requiring the department to provide the time and place of the examination to each applicant for an examination.

Section 8. Amends s. 626.261, F.S., pertaining to conduct of the examination. The legislation provides that effective January 1, 2007, an applicant for license examination must appear in person and personally take the examination.

Section 9. Amends s. 626.281, F.S., relating to reexaminations, to provide that an applicant for examination may take additional examinations.

Section 10. Amends s. 626.291, F.S., pertaining to examination results. Effective January 1, 2007, the DFS must promptly issue a license for examination applicants as soon as the

department approves the application for those applicants who have completed the examination and received a passing grade prior to submitting the license application. The bill provides that a passing grade is valid for 1 year and that the department may not issue a license based on an examination taken more than 1 year prior to filing an application.

Section 11. Appropriates for FY 2006-07, \$158,995 in recurring funds and \$120,069 in nonrecurring funds from the Insurance Regulatory Trust Fund in the Department of Financial Services for the purposes of funding the act and three full-time equivalent positions with \$103,285 in associated salary rate.

Section 12. Except as otherwise expressly provided, provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons taking an insurance licensing examination will benefit under the provisions of this bill by having their fingerprints processed at the examination location. Also, applicants are allowed to take the license examination prior to having to submit their license application to the department. This allows an applicant to receive his or her test results before investing the money (\$172 for application and fingerprinting fees) and the time in the application process, should such applicant fail the examination.

C. Government Sector Impact:

Officials with DFS state that three positions (two regulatory consultants and one examination development specialist (psychometrician)) are needed, with \$103,285 in associated salary rate, to implement the provisions of the bill. An appropriation of \$158,995 (recurring funds) and \$120,069 (nonrecurring funds) for FY 2006-07 is necessary from the Insurance Regulatory Trust Fund in the Department of Financial Services.

According to officials with the department, the vendor (Promissor) that will provide fingerprinting services at the 19 examination centers has stated that a fingerprinting fee of \$65 per license applicant will cover the costs to implement the fingerprinting requirements of the bill. The department will have to amend its rule to increase the current fee (\$64) by one dollar. The costs to the vendor are estimated to be the price of the FBI approved fingerprinting equipment (\$285,000) which is \$15,000 per machine for each examination location.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 104402 by Criminal Justice:

Exempts from exam requirement an applicant for license as an adjuster who has the designation of Professional Property Insurance Adjuster (PPIA) from the HurriClaim Academy and when other conditions are met.

Barcode 882332 by Criminal Justice:

Requires the Department of Financial Services to prepare and make available upon request a report of statistical information relating to each life insurance test form administered during the previous calendar year, which shows, for each test, for all examinees, and separately for African-American examinees, White examinees, American Indian examinees, Asian examinees, Hispanic examinees, and other examinees, the correct-answer rates and correlations.

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